

(Rev. 11/2012)

**PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

FILED - GR

November 18, 2019 11:18 AM
CLERK OF COURT
U.S. DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
BY: mkc SCANNED BY: JW 11-18-19

United States District Court	District
Name (under which you were convicted):	Docket or Case No.: <u>19-22635 FC</u>
Place of Confinement: <u>St. Joseph County Jail</u>	Prisoner No.: <u>103639</u>
Name of Petitioner (include name under which convicted) <u>Theron Phone Hunt</u>	Name of Respondent (authorized person having custody) <u>v. St. Joseph County Sheriff</u>
The Attorney General of the State of: <u>MICHIGAN</u>	

1:19-cv-977

Janet T. Neff - U.S. District Judge
Phillip J. Green - U.S. Magistrate Judge

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: _____
Forty-Fifth Judicial Circuit Court of Michigan
P.O. Box 189, Courts Building, Centreville, MI 49032
 (b) Criminal docket or case number: 19-22635 FC
- Date of judgment of conviction: Pending trial
- Identify all counts and crimes for which you were convicted and sentenced in this case: Pending trial

- Length of sentence for each count or crime for which you were convicted in this case: Pending trial

- (a) What was your plea?
 Not guilty ☒
 Guilty ☐
 Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or charge, and a not guilty plea to another count or charge, give details:

Not guilty plea for all charges, Awaiting trial.

6. If you went to trial, what kind of trial did you have? (Check one)

(a) Jury ☐

(b) Judge only ☐

7. Did you testify at the trial? Yes ☐ No ☐

8. Did you file a direct appeal to the Michigan Court of Appeals from the judgment of conviction? Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Date you filed: _____

(b) Docket or case number: _____

(c) Result: _____

(d) Date of result: _____

(e) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(g) Did you seek further review of the decision on appeal by the Michigan Supreme Court? Yes ☐ No ☐

If yes, answer the following:

(1) Date you filed: _____

(2) Docket or case number: _____

(3) Result: _____

(4) Date of result: _____

(5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☐

If yes, answer the following:

(1) Date you filed: _____
(2) Docket or case number: _____
(3) Result: _____
(4) Date of result: _____
(5) Grounds raised: _____

10. Did you file a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules with respect to the judgment of conviction and sentence? Yes ☐ No ☐

11. If your answer to 10 was "yes," give the following information:

(a) (1) Date you filed: _____
(2) Name of court: _____
(3) Docket or case number: _____
(4) Grounds raised: _____

(5) Did you receive a hearing where evidence was given on your motion? Yes ☐ No ☐

(6) Result: _____

(6) Date of result: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) If you sought further review of the decision in the Michigan Court of Appeals, please answer the following:

- (1) Date you filed: _____
- (2) Docket or case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) If you sought further review of the decision in the Michigan Supreme Court, please answer the following:

- (1) Date you filed: _____
- (2) Docket or case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

12. Other than a direct appeal or a motion for relief from judgment, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes ☐ No ☐
13. If your answer to 12 was "yes," give the following information: [Attach additional sheets of paper, if necessary, to answer the following for each petition, application, or motion you filed.]

- (a) (1) Date you filed: _____
- (2) Name of court: _____
- (2) Docket or case number: _____
- (3) Nature of the proceeding: _____

(4) Grounds raised: _____

(5) Did you receive a hearing where evidence was given on your motion? Yes ☐ No ☐

(6) Result: _____

(7) Date of result: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(b) Did you appeal to the highest court having jurisdiction the result of action taken on any petition, application or motion?
Yes ☐ No ☐

If yes, please provide the following:

(1) Date you filed: _____

(2) Name of court: _____

(3) Result: _____

(4) Date of result and case number: _____

(5) Grounds raised: _____

Please submit, if available, a copy of any brief filed on your behalf and a copy of the decision by the court.

(c) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

14. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

Excessive Bail; An incorporated protection that is deeply rooted in this Nation's history and tradition.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim.):

Michigan Courts failed to proceed according to the supreme law of the land, that is, according to written constitutional and statutory provisions, the state further failed to provide some baseline procedures, my claim has everything to do with process due to me. The legal fiction of substantive due process should be applied. The amount of my bail is so excessive as to constitute an abuse of discretion.

(b) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why:

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed:

Name and location of the court where the motion was filed:

Docket or case number:

Result (attach a copy of the court's opinion and order, if available):

Date of result:

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: I am awaiting trial. My lawyer has hindered me and my ability to properly challenge this constitutional deprivation, ignoring my request to file a motion for bail reduction.

(e) If you did not exhaust your state remedies on Ground One, explain why: _____

GROUND TWO: Ineffective Counsel; venal, underhanded conduct. Unreasonably not devoting full effort to my legal representation

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): This purported representation has only been perfunctory, a mere display that has been without adequate opportunity for conference and preparation. The refusal to allow me to confer, consult, or communicate has denied me the abilities to ask questions, express concerns, or offer advice and suggestions. The lack of communication has been fundamentally unfair. Almost one year since my arrest and my requests for relevant case law and trial preparation goes ignored. My request for meaningful motions are ignored as well.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: I have petitioned the judge multiple

times seeking redress in regards to my lawyer's improper conduct, I have
filed complaints with the attorney grievance commission and American Bar Association.

(e) If you did not exhaust your state remedies on Ground Two, explain why: _____

GROUND THREE: Denied "fundamental constitutional right of access to the courts. Prevented from pursuing a non-frivolous claim that was arguable in law.

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): The inadequacies of not being provided with an adequate opportunity to litigate my non-frivolous claim prevented me from filing a brief for my appeal. The tools required in order for me to properly challenge the conditions of my confinement were never provided. One of the harms that I suffered was the loss of an opportunity to file an appeal in the Sixth Circuit related to a constitutional deprivation. I have continuously been denied sufficient access to legal research materials to prepare pro se pleadings, appeals, and other legal documents.

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: I have exhausted all available Administrative remedies as required by the Prison Litigation Reform Act, I have petitioned the courts, the Judge, and the Sheriff. My grievance request for further formal hearings are ignored.

(e) If you did not exhaust your state remedies on Ground Three, explain why: _____

GROUND FOUR: Religious Discrimination, Violation of free exercise rights

(a) Supporting FACTS (Do not argue or cite law. Just state the specific facts that support your claim): I am a Hebrew Israelite, there is a severe lack of access to individual spiritual counseling in times of crisis and a lack of access to spiritual advisors of my own faith. There is a forced choice between religiously mandatory observances, coerced participation in religious observances and programs, lack of access to chaplains of ones faith, and denial of access to religious items and literature. The Administrator Kiffy Buchner told me that I should just be happy that I am able to have a bible.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

GROUND FIVE: Excessive Force; unnecessary force under the circumstances.

(a): Detective Timothy Schuur with the cass county sheriff's department negligently used excessive force while detaining me and handcuffing me. I informed detective Schuur that I was recovering from a surgery and he totally disregarded what I said and continued to apply unnecessary force after I was hand cuffed until my distal bicep was reruptured instantly causing me extreme pain and discomfort. I was then thrown into the back of detective Phil Small's car. I immediately informed detective Phil Small that I needed medical attention and I was told that I would be taken to the Cass County Sheriff's department to await questioning from St. Joseph County detectives, then he said I would be receiving medical attention. After the questioning from St. Joseph County detectives I was taken to McDonald's, then I was driven to the flowerfield general area to help locate a shotgun then I was taken to the St. Joseph County Jail and told I will receive medical attention there. I was arrested on November 16, 2018. I did not receive medical attention from the injury that I sustained from Cass County Detective Timothy Schuur until November 19th 2019. I was informed that there was nothing that they could do for me. My bicep is all the way up in my shoulder and a whole year later I still have not received adequate medical attention. My Lawyer claims that he is not a civil rights lawyer and continues to refuse to get involved, he claims he used to be a correctional officer here at the jail before he became a lawyer.

GROUND SIX: Radical Defect in Right to Speedy Trial;

Deprivation of my right to a speedy trial.

(a): I assert that the unreasonable delays have meaningfully impaired my ability to defend against the charges against me to the extent that the outcome of the proceeding will likely be affected. Due to the oppressive delays in regards to my rights to a speedy trial, my ability to defend and my right to have compulsory process for obtaining witnesses in my favor has been unfairly impaired because witnesses and evidence needed to defend against the claim have become lost and unavailable. One delay can be attributed to me related to a motion filed by my attorney to hire an expert witness to examine the digital evidence at the cost of the court. Besides that none of the other delays should be held attributable to me. This oppressive pretrial incarceration has subjected me to unnecessary levels of anxiety and unfairness that has prejudiced my defense.

The extrinsic fraud that I have been faced with within the 45TH Circuit Court of St. Joseph County has been demonstrated, clearly and convincingly. The underhanded illicit manner in which I am being prosecuted and represented only goes to show that the unwarranted, biased fiduciary relationships that exist in today's society between county prosecutors and court appointed lawyers are in fact tainted and severely prejudiced. I am seeking redress in the most humblest terms.

I have a constitutional and statutory right to a speedy trial, I believe this right is intentionally being deprived in an underhanded manner and a collusion between the prosecutor John McDonough and my court appointed attorney Timothy J. Reed who has continued to refuse to respond to any of my letters expressing concerns pertaining to this right.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in a motion for relief from judgment pursuant to Subchapter 6.500 of the Michigan Court Rules? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Date motion was filed: _____

Name and location of the court where the motion was filed: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available): _____

Date of result: _____

(3) Did you receive a hearing on your motion? Yes ☐ No ☐

(4) Did you appeal from the denial of your motion? Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? Yes ☐ No ☐

If yes, answer the following:

Date you filed: _____

Name and location of court: _____

Docket or case number: _____

Result (attach a copy of the court's opinion and order, if available) : _____

Date of result: _____

(d) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: I have exhausted all administrative

remedies, grieving the chaplain, petitioned the Sheriff and Jail Administrator,
filed grievances and requested formal hearings, only to be ignored and forgotten.

(e) If you did not exhaust your state remedies on Ground Four, explain why: _____

15. Have you previously filed any type of petition, application or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available:

16. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, as to the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the date of filing, the name and location of the court, the docket or case number, the type of proceeding, and the issues raised:

17. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Timothy J. Reed, Timothy George; of Bird, Scheske, Reed & Beemer, P.C.
227 W. Chicago Road Sturgis, MI 49091

(b) At arraignment and plea: _____

(c) At trial: _____

(d) At sentencing: _____

(e) On appeal: _____

(g) On appeal from any adverse ruling in a post-conviction proceeding: _____

- (a) If so, give the name and location of court which imposed the sentence to be served in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the above sentence: _____

19. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

*The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -

- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
- (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;
- (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant him or her the relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed

in the prison mailing system on November, 03, 2019 (month, date, year).


Signature of Petitioner

11-3-2019
Date

Signature of Attorney (if any)

If the person signing is not petitioner or an attorney, state relationship to petitioner and explain why petitioner is not signing this petition. _____

Theron P. Hunt
P.O. Box 339
Centreville, MI
49032



Clerk, U.S. District Court
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110 Michigan St., NW
Grand Rapids, MI
49503

